

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

ZAPATA COUNTY, TEXAS,
MELISSA CIGARROA,
CCMD, LLC & GEORGE C.
RINCON,

Plaintiffs,

v.

JOSEPH R. BIDEN, Jr. PRESIDENT OF
THE UNITED STATES; ALEJANDRO
MAYORKAS,¹ as the secretary of THE
UNITED STATES OF AMERICA'S
DEPARTMENT OF HOMELAND
SECURITY and TROY MILLER, as
the Acting Commissioner of THE UNITED
STATES CUSTOMS AND BORDER
PROTECTION,

Defendants.

CASE NO. 5:20-CV-106

**JOINT ADVISORY ON THE PRESIDENTIAL PROCLAMATION PAUSING BORDER
WALL CONSTRUCTION**

1. On February 10, 2021, the Court ordered² the Plaintiffs and Defendants (collectively, the “Parties”) to issue a Joint Advisory on the status of this case and the propriety of a stay of the proceedings until March 21, 2021.

2. On January 20, 2021, the President issued a proclamation on “Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction. Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 27, 2021).

¹ On February 2, 2021, Alejandro Mayorkas was sworn in as the Secretary of the Department of Homeland Security. Pursuant to Federal Rule of Civil Procedure 25, when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending, “[t]he officer's successor is automatically substituted as a party.”

² Dkt. No. 31

3. The Proclamation orders the United States Department of Homeland Security (“DHS”), United States Custom and Border Protection (“CBP”) and construction contractors to “pause work on each construction project on the southern border wall, to the extent permitted by law, as soon as possible but in no case later than seven days from the date of this proclamation.” *Id.* § 1(i). The pause applies “to wall projects funded by redirected funds as well as wall projects funded by direct appropriations.” *Id.* § 1(b). Further, the Proclamation orders DHS to “pause immediately the obligation of funds related to construction of the southern border wall, to the extent permitted by law.” *Id.* § 1(ii). The Proclamation provides that DHS “may make an exception to the pause, however, for urgent measures needed to avert immediate physical dangers or where an exception is required to ensure that funds appropriated by the Congress fulfill their intended purpose.” *Id.* § 1(b).

4. In accordance with the Proclamation, suspension notices have been issued to all the construction contractors working on CBP-funded wall projects, including the CBP-funded wall projects the Laredo Sector that are at issue in this case. The suspension notices require the construction contractors to suspend all work in furtherance of their respective contracts.

5. While construction and obligations are paused, the Proclamation directs the United States Department of Defense (“DOD”), DHS, and other federal agencies to collect information about border wall contracts, the status of construction, and funding methods; assess the legality of the funding and contracting methods for the border wall projects; and evaluate the administrative and contractual consequences of ceasing each wall construction project. *See* Proclamation §§ 1(i), (iii).

6. Additionally, the Proclamation orders agencies to develop a plan within 60 days “for the redirection of funds concerning the southern border wall, as appropriate and consistent with applicable law.” *Id.* § 2. The plan must “include consideration of terminating or repurposing contracts with private contractors engaged in wall construction, while providing for the

expenditure of any funds that the Congress expressly appropriated for wall construction, consistent with their appropriated purpose.” *Id.* “After the plan is developed, the Secretary of Defense and the Secretary of Homeland Security shall take all appropriate steps to resume, modify, or terminate projects and to otherwise implement the plan.” *Id.*

7. As of the date of this filing, DHS and DOD, along with other agencies, have not yet developed the plan for the redirection of funds required by the Proclamation and no final decisions have been made concerning the border wall projects in the Laredo Sector that are at issue in this case.

8. In response to the Court’s Order³ on the propriety of staying the case until March 21, 2021, parties concur that a stay is proper. A stay would allow time for DHS and DOD to develop a plan on the redirection of funds and to evaluate the impacts the plan would have on the present case. However, given the many pressing matters DHS is addressing and the time likely required for DHS and DOD to develop a plan, the Parties recommend that the case be stayed for 90 days, though May 21, 2021.

9. The plan to be prepared by DHS as required by the Proclamation may impact this lawsuit. Therefore, Zapata County, Texas (“Zapata”) seeks to consult with decisionmakers at DHS regarding the issues posed by this lawsuit in an attempt to reach a settlement with the Defendants. Zapata seeks a referral to mediation or settlement conference pursuant to Local Rule 16.4C. Defendants are open to settlement discussions but do not believe that mediation or a settlement conference are warranted at this time.

³ Dkt. No. 31

Respectfully Submitted,

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